RECENT DECISIONS

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CARRIERS—ACCEPTANCE NOT "FOR PURPOSE OF TRANSMISSION"—ACTION BY CONSIGNEE.—The A. Coal Company had a contract with the plaintiff for coal f. o. b. the mine; and one with the defendant railroad for fuel, under which the Company was delinquent. After notification by the railroad that it would accept no further coal for the plaintiff while its own contract remained unfulfilled, the Coal Company delivered to the railroad, cars consigned to the plaintiff, from which the railroad removed the consignment tags, taking over the coal "under its contract". *Held,* as against the plaintiff, the coal belonged to the defendant, who had a right to refuse transportation and take the coal where necessary to operate the lines. *Springfield Light, etc. Co.* v. *Norfolk & W. Ry.* (D. C., S. D. Ohio, 1919) 260 Fed. 254.

Ordinarily the obligee cannot secure performance of a contract obligation by self-help. *Atlantic, etc. Co.* v. *Vulcanite, etc. Co.* (1911) 203 N. Y. 133, 96 N. E. 370. In the absence of an overriding public policy the defendant must be deemed to have converted the coal. If the summary eminent domain exercised be sanctioned independently of alleged contract rights, the railroad is still liable to pay the owner just compensation. Lewis, Eminent Domain (3rd ed.) § 889. The plaintiff's right to recover can arise only from an appropriation of the coal by the Company to the plaintiff's contract. *Fordice* v. *Gibson* (1891) 129 Ind. 7, 28 N. E. 303. Such appropriation demands (1) the assent of the seller, Uniform Sales Act § 19, rule 4 (1); Williston, Sales § 278,—this must be derived from the express purpose shown in tagging the cars, as modified by the seller's previous knowledge of the defendant's purpose to refuse transportation—, (2) the prior assent of the buyer. Usually the act which the buyer contemplates is not a conventional tender to the carrier, but the effectuation of a proper contract of shipment. *Buckman* v. *Levi* (1813) 3 Campb. 414; *Ward* v. *Taylor* (1870) 56 Ill. 494. Where the carrier had no intention of receiving the goods "for purpose of transmission", Uniform Sales Act §19, rule 4 (2), no contract can be based merely upon the common-law duty of the carrier to receive. See *Pittsburgh, etc., Ry.* v. *Morton* (1878) 61 Ind. 539, 573. The privilege to refuse posited in this case at most relieves the defendant of its liability to pay damages. *Atlantic Coast Line Ry* v. *Geraty* (C. C. A. 1908) 166 Fed. 10. Upon this interpretation of the facts, the defendant has converted the Company's coal, conferring no rights upon the plaintiff. But in passing, the reasoning of the court involves an extension of the principle of eminent domain hardly sanctioned in precedent and of doubtful effect upon the security of business transactions.

CARRIERS—LIABILITY FOR DEATH OF DOG—FAILURE TO EXERCISE.—The plaintiff in South Carolina delivered to the defendant Express Co. for carriage to Colorado a dog contained in a crate plainly marked "Exercise at least once each day while en route". The instruction was